



OF THE DISTRICT ATTORNEY, Bronx County

**DARCEL D. CLARK**  
*District Attorney*

198 East 161st Street  
Bronx, New York 10451

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March 5, 2021

Honorable Barbara Moses  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Courtroom 20A  
New York, New York 10007-1581

**MEMO ENDORSED**

RE: *Mayrant v. Keyser*, 20 Civ. 09324 (GBD)(BCM)

Dear Judge Moses:

My Office represents the Respondent in the above-entitled proceeding, and pursuant to your Order dated January 19, 2021, our response to Petitioner's *pro se habeas corpus* petition is currently due March 19, 2021. I am writing to join petitioner's request that this Court stay the proceedings, including the filing of Respondent's response, to ensure exhaustion of his claims.

In his petition, Petitioner argues, *inter alia*, that because the criminal court complaint used to commence his prosecution was "jurisdictionally defective," the state court "lack[ed] . . . trial jurisdiction." See Pet., p.4. He also acknowledges that he initially raised this claim in a CPL § 440.10 motion, which is currently pending in state court and "request[s] . . . a stay and abeyance" to exhaust this claim. See Pet., p. 3-4; see also Exhibit 1, CPL § 440.10 motion. Because petitioner's claim is unexhausted (*see* 28 U.S.C § 2254[b][1]), Respondent joins in this request.

"As a matter of comity, federal courts should not consider a claim in a *habeas corpus* petition until after the states court have had an opportunity to act." *Rose v. Lundy*, 455 U.S. 509, 515 (1982), citing *Ex parte Royall*, 117 U.S. 241, 251 (1886); *see also Younger v. Harris*, 401 U.S. 37, 43-45, (1971); 28 USC 2254(b) ("an application for a writ of *habeas corpus* . . . shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State"). Thus, "in the interests of comity and federalism . . . state courts must have the first opportunity to decide a petitioner's claims," (*Rhines v. Weber*, 544 U.S. 269, 273 [2005]), otherwise, a petition that contains both exhausted and unexhausted claims fails to meet the total

exhaustion requirement imposed upon writs of *habeas corpus* and must be dismissed. *Rose v. Lundy*, 455 U.S. at 510, 522.

Accordingly, Respondent requests this Court stay the proceedings, including the filing of the undersigned's response, until 45 days after Petitioner exhausts his claim in state court. In doing so, however, Respondent makes no concessions regarding the merits of any of petitioner's arguments and does not comment on any facts or allegations petitioner raises in his motion. Moreover, determining whether such a stay is appropriate is within this Court's discretion. *Rhines v. Weber*, 544 U.S. at 277 (2005).

Respectfully,

cc: Raymond Mayrant  
16-A-0232  
Sullivan Correctional Facility  
P.O. Box 700  
Fallsburg, New York 12733

*Cynthia A. Carlson*  
Cynthia A. Carlson  
Bronx County District Attorney  
Assistant District Attorney  
198 East 161st Street  
Bronx, New York 10451  
[Carlsonc@bronxda.nyc.gov](mailto:Carlsonc@bronxda.nyc.gov)

Application GRANTED. This action is STAYED and held in abeyance until 45 days after a decision is issued in state court on petitioner's CPL § 440.10 motion. Petitioner is directed to notify the Court within ten days of receiving a decision on his motion. Failure to timely notify this Court and request that the Court lift the stay may result in dismissal for failure to prosecute.

The Clerk of Court is respectfully directed to mail a copy of this Order to the *pro se* petitioner.

SO ORDERED.



Barbara Moses, U.S.M.J.  
March 8, 2021

EXHIBIT 1, Petitioner's CPL § 440.10 motion



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF: Bronx

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,  
Respondent(s)

- against -

Raymond Mayrant  
Defendant(s).  
-----X

NOTICE OF MOTION TO  
VACATE JUDGMENT  
C.P.L. §440.10

Ind. No. 305/13

PLEASE TAKE NOTICE that upon the annexed affidavit of Raymond Mayrant  
sworn to on the 6<sup>th</sup> day of May, 2020 (and documents attached thereto) and upon the accusatory  
instrument and all other papers filed and proceedings herein, defendant will move this Court, at  
the Courthouse located at 265 East 161<sup>st</sup> Bronx - N.Y. 10451 on the 8<sup>th</sup> day of  
June, 2020, at 10:00 a.m., or as soon thereafter as counsel may be heard, for:

An order, pursuant to Criminal Procedure Law §440.10(1[a]), vacating the judgment  
entered against the above-named defendant on the 11<sup>th</sup> day of February, 2016, on the  
following grounds.

- (a) illegal arrest Warrant
- (b) lack of trial jurisdiction
- (c) \_\_\_\_\_

An order,

An order, pursuant to Crim. Proc. Law §440.30(5), to produce the defendant at any  
hearing conducted to determine this motion; and

Such other and further relief as the Court may deem just and proper.

Dated: Fallsburg, New York  
May 6, 2020

Yours,  
[Signature]  
Pro-se

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF: Bronx-----X

THE PEOPLE OF THE STATE OF NEW YORK,  
Respondent(s)

**AFFIDAVIT IN SUPPORT OF  
MOTION TO VACATE THE  
JUDGMENT C.P.L. §440.10**

-against-

Raymond Maysant,  
Defendant(s).-----X

Ind. No. 305 / 13

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF SULLIVAN )

I Raymond Maysant being, duly sworn, deposes and says:

1. I am the defendant in the above-entitled proceeding. I make this affidavit in support of a motion, pursuant to section 440.10, subdivision 1[a], to vacate the judgment of conviction herein, upon the grounds that:

- (a) illegal arrest Warrant
- (b) lack of trial jurisdiction
- (c) \_\_\_\_\_

2. I was, indicted for:

- (a) Murder in the Second Degree
- (b) Attempted murder in the Second Degree
- (c) Criminal possession of Weapon

3. At arraignment I entered a plea of "not guilty" and posted bail in the, amount of \$ \_\_\_\_\_. I was, tried in this court before Hon. Judge Alvin Yeatswood on the 9<sup>th</sup> day of November, 2015 The case was, submitted to Jury.

4. On Feb 11, 2016 I was, sentenced to: 25 years to life  
25 years consecutively

5. The evidence adduced at my trial may be, summarized as follows: There  
was no evidence at my trial.

6. \_\_\_\_\_.

7. [If applicable, include:] Among the evidence gathered by the State in its investigation of the crime and admitted at my trial [or] but not admitted at my trial was NA

NA is relevant to proof of guilt in that

NA. My conviction occurred prior to January 1, 1996, to wit, on \_\_\_\_\_, \_\_\_\_\_, NA.

8. The ground(s) for relief raised upon this motion has (have) not previously been determined on the merits upon a prior motion or proceeding in a court of this state, or upon a appeal from the judgment, or upon a prior motion or proceeding in a federal court.

9. **WHEREFORE**, I respectfully request that my conviction be vacated on the ground that A violation of my 4<sup>th</sup> and 5<sup>th</sup> Constitutional Rights occurred, and that this Court grant such other and further relief as it may deem just and proper [or if applicable];

10. **WHEREFORE**, I respectfully request an Order of this Court pursuant to N.Y. Crim. Proc. Law 440.10 and granting such other and further relief as the Court may deem just and proper.

Dated: May 6, 2020

[Signature]  
Defendant, Pro-se

Sworn to before me this

10<sup>th</sup> day of MAY, 2020.

NOTARY PUBLIC

RICHARD P. WISSLER  
Notary Public, State of New York  
No. 01W6397622  
Qualified in Orange County  
My Commission Expires on September 9, 2023



**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF SULLIVAN )

I, Raymond Mayrant, being duly sworn, deposes and says:

I am the defendant in the enclosed action.

I have on this 29 day of May, 20 20, placed and submitted within the institutional mailbox located at Sullivan Correctional Facility, P.O. Box 116, 325 Riverside Drive, Fallsburg, NY 12733 the following: CPL 440.10 Notice of motion to vacate judgment.

to be duly mailed and delivered via the United States Postal Service upon the following party[s]:

<u>Supreme Court</u>	<u>Dee-El D. Clark</u>
<u>Court clerk</u>	<u>District Attorney</u>
<u>265 East 161<sup>st</sup></u>	<u>198 East 161 Street</u>
<u>Bronx, Ny 10451</u>	<u>Bronx, New York 10451</u>

Respectfully submitted,

[Signature]

[Print Name]

Raymond Mayrant  
Sullivan Correctional Facility  
P.O. Box 116  
Fallsburg, N.Y. 12733-0116

Sworn to before me this

29 day of May, 20 20

Christopher E. Barreto  
NOTARY PUBLIC

CHRISTOPHER E BARRETO  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01BA6382056  
Qualified in Orange County  
My Commission Expires October 15, 2022

**Ground One:** The felony complaint that was used to commence a criminal action against me is jurisdictionally defective because it never established reasonable cause which is the equivalent of probable cause the constitutional prerequisite for a lawful arrest. **C.P.L. 120.20**. I say this because in my felony complaint which is based-on information and belief failed to establish the witnesses bases of knowledge of information and the grounds of belief. There was nothing said in my felony complaint stating the witnesses observed me the defendant committing any criminal act and nothing was stated that the witness identified me as the suspect. The basis of knowledge and reliability of the witnesses was never shown. Therefore, reasonable cause was never established. Which is a violation of the United States Constitution Fourth Amendment because it states in essentially identical wording:

The right of the people to be secured in their persons, houses, and effects, against unreasonable searches and seizures, shall not be violated. And no warrants shall issue- but upon probable cause, supported by oath of affirmation and particularly describing the place to be searched, and the person or things to be seized.”

Reasonable cause must be demonstrated on the face of an accusatory instrument in order to confer jurisdiction of the criminal action and control over the liberty of an accused person which is a United States Constitutional requirement which was never established in my felony complaint. See *Fitzpatrick v. Rosenthal*, 809 N.Y.S. 2d 729. See also, *Giordennello v. US*, 357 U.S. 480 (1958).



In this case, *Illinois v. Gates*, 462 U.S. 213 (1983), where a petition for certiorari filed by the State seeking review of a decision of the Illinois Supreme Court, 85 Ill. 2d 376, 53 Ill. Dec. 218, 423 N.E. 2d 887, which affirmed decision of lower state court, 82 Ill. App. 3d 749, 38 Ill. Dec. 62, 403, N.E. 2d 77, which upheld order granting motion suppressing evidence seized pursuant to a search warrant. The Supreme Court Justice Rehnquist, held that: (1) rigid two-pronged test under *Aguilar* and *Spinelli* for determining whether an informant's tip establishes probable cause for issuance of a warrant would be abandoned and a totality of the circumstances approach that traditionally has informed probable cause determinations would be substituted in its place.

But at the same time in section \*230 agrees with the Illinois Supreme Court that an informant's "veracity, reliability, and bases of knowledge are all highly relevant in determining the value of his report. Then it goes on to say in section \*233 that there are persuasive arguments against according ~~to~~ these two elements such independent status. Instead they are better understood as relevant considerations in the totality of the circumstances analysis that traditionally has guided probable cause determinations. A deficiency in one may be compensated, for in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.

In my felony complaint which I attached to this motion, marked as Exhibit “A,” did not set forth neither the basis of knowledge or the reliability prong because my felony complaint which states the grounds for the deponent’s belief are as follow: deponent states based upon official investigation which it never explains what the investigation revealed and then it says witnesses known to the police department in which no information was furnished to the court concerning whether the witnesses accounts came from an anonymous or a paid informant, in which event an independent showing of reliability would have been required, or whether those accounts came from an identified citizen informant; in which event there would be no need to furnish further evidence of reliability. In the case of *Giordenllo v. U.S.*, 357 U.S. 480 (1958), states the language of the Fourth Amendment, that no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the persons or things to be seized \*\*\*, of course applies to \*486 arrest as well as search warrants. Therefore, a warrant for my arrest should never have been issued as result of my felony complaint which never established probable cause. Also see *State v. Chaplin*, 191 Vt. 583 (2013).

**Ground Two:** My Fifth Amendment due process clause of the United states Constitution was violated because the court lacked jurisdiction over me at the time of my trial and having jurisdiction means that the court has the power to hear my case which it did not because my felony complaint which was used to commence a

criminal action against me is jurisdictionally defective because it did not establish reasonable cause. I say this because my felony complaint which was based upon information and belief, never established the witness's sources of information and the grounds of belief. There was nothing stated in my felony complaint that the witness observed me the defendant committing any criminal act and nothing was stated that the witnesses identified me as the suspect. The basis of knowledge and reliability of the witnesses was never shown. Which is a United States constitutional right that reasonable cause must be demonstrated on the face of the felony complaint in order for the court to confer jurisdiction of the criminal action and control over the liberty of an accused person. Therefore, the court lacked jurisdiction to hold a trial let alone, convict me. See *Butler v. King*, 781 F. 2d 486, 490 (5<sup>th</sup> Cir. 1986); *Lowey v. Estelle*, 696 F. 2d 333, 336-38 (5<sup>th</sup> Cir. 1983).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Raymond Mayrant', is written over a horizontal line.

Raymond Mayrant  
16-A-0232



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Mayrant

(List the name(s) of the plaintiff(s)/petitioner(s).)

20 Civ. 09324 ( GBD) ( BCM)

- against -

**AFFIRMATION OF SERVICE**

Keyser

(List the name(s) of the defendant(s)/respondent(s).)

I, (print your name) Cynthia A. Carlson, declare under penalty of perjury that I served a copy of the attached (list the names of the documents you served): Letter motion joining stay application

upon all other parties in this case by (state how you served the documents, for example, hand delivery, mail, overnight express) mail to the following persons (list the names and addresses of the people you served): Raymond Mayrant, 16-A-0232 Sullivan Correctional Facility, P.O. Box 700, Fallsburg, New York 12733

on (date you served the document(s)) March 5, 2021.

March 5, 2021  
Dated

Cynthia A. Carlson

Signature

198 East 161st Street

Address

Bronx, New York

City, State

10451

Zip

(718) 838-7095

Telephone Number

carlsonc@bronxda.nyc.gov

E-Mail Address